

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of

Closed Captioning and Video Description
of Video Programming

CS Docket No. 95-176

OPPOSITION TO PETITIONS FOR RECONSIDERATION

Association of Local Television Stations, Inc.
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November 26, 1997

By: CH9

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

The Association of Local Television Stations, Inc. ("ALTV"), hereby submits its opposition to several petitions for reconsideration of the Commission's *Report and Order* in the above-captioned proceeding.¹ In particular, ALTV herein responds to several of the proposals advanced by the National Association of the Deaf ("NAD") and Consumer Action Network ("CAN") and Self Help for Hard of Hearing People, Inc. ("S3HP").² Their calls for more demanding rules and timetables reflect legitimate and understandable interests in maximizing captioning, but no first-hand perception of the burdens and costs of compliance. Whereas ALTV

¹FCC 97-279 (released August 22, 1997), 62 *Fed. Reg.* 48487 (September 16, 1997)[hereinafter cited as *Report and Order*]. See *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, 62 *Fed. Reg.* 60712 (November 12, 1997).

²Comments of Self help for Hard of Hearing People, Inc., MM Docket No. 95-176 (filed October 16, 1997)[hereinafter cited as "Self Help"]; Request for Reconsideration by the National Association of the Deaf and the Consumer Action Network, MM Docket No. 95-176 (filed October 15, 1997)[hereinafter cited as "NAD"].

never would suggest that such a thing as "too much captioning" might exist, ALTV reiterates that the Commission has structured a regulatory regime and timetable which is realistic and achievable. This is fully consistent with the statute, which contemplated phased-in requirements and exemptions as necessary to avoid undue burdens. More demanding requirements, therefore, would upset the balance and read the statute's mandate to avoid undue burdens out of the law.

These proposals also reflect a misimpression that the amount of captioning will be strictly a matter of the legal requirements. NAD/CAN, for example, in one instance, suggests that the mandate of the law is the impetus to action.³ ALTV respectfully submits that the existing and ever-increasing amount of captioned programming today -- when no rule requires any captioning⁴ -- belies this perspective. Far more than any rule or regulation, consumer demand and local television stations' sense of responsibility to their entire communities has and will continue to drive the effort to maximize captioning. In any event, the concept of a recalcitrant broadcast television industry, dragged mercilessly forward by the iron grip of the law, has little place in these deliberations. Lastly by way of introduction, ALTV submits that the application of more demanding rules at this time would be premature. The Commission wisely and properly is poised to review its rules at appropriate intervals in the future. These reviews will permit the Commission to take into account technological developments such as computer voice-recognition techniques which ultimately may permit instantaneous captioning of live, as well as pre-recorded programming. Therefore, the Commission should reject proposals to impose unrealistic and counterproductive requirements on local television stations.

³NAD at 16.

⁴See NAD at 12. ("...Univision, the nation's premier Spanish language network....[s]upports 'the admirable goals behind closed captioning and [that it] will endeavor to provide this service to its audience.' Comments of Univision at 1,4 (Feb. 28, 1997)[footnote omitted]"). Such recognition of this one broadcaster's intentions belies its concern that only rules will prompt more captioning.

ALTV also wishes to address several specific proposals by NAD/CAN and S3HP, as follows:

First, the Commission should maintain the requirement that 95 per cent of a station's new, non-exempt programming be captioned after the phase-in period. NAD/CAN seeks elimination of the five per cent *de minimis* flex in the requirement applicable to new, non-exempt programming. Initially, NAD/CAN appears to overstate the effect of the provision. They estimate that it could exempt as much as one hour per day of programming (based on an annual schedule consisting of 365 days x 20 hours of programming per day = 7300 hours, five per cent of which is 365 hours). The rule, however, is not based on a station's full program schedule. It provides that 95 per cent of a station's *new, non-exempt* programming must be provided with captions as of January 1, 2006. 47 CFR §79.1(b)(1)(iv). Thus, even if a station relied on the 95 per cent requirement to the maximum allowed, the allowable amount of uncaptioned, new, non-exempt programming, would be less than one hour per day. At worst, this might permit a station to strip a popular "evergreen" 30-minute syndicated situation comedy in those rare instances when stations otherwise would be placed in the position of making programming decisions based on whether a program is captioned or may be captioned in an economically feasible manner.⁵ In any event, stations hardly are likely to push the five per cent leeway to the maximum on an ongoing basis, as NAD/CAN fears.⁶ Local television stations more likely would "bank" a good part of the rule's flexibility to accommodate the unforeseen or unintended glitch which prevents a station from

⁵See Comments of ALTV, MM Docket No. 95-176 (filed February 28, 1997) at 8-9.

⁶NAD at 6, n.5.

captioning new, non-exempt programming.⁷ No basis exists, therefore, for NAD's allegation that stations would implement a "one hour captioning-free" slot.

ALTV also posits that draping the 95 per cent requirement with a reporting obligation would reimpose the burden (albeit in another form) which the Commission sought to avoid in the first place. Stations would be placed in the position of having to justify to the Commission every minute of noncaptioned, new, nonexempt programming via *post* broadcast reporting. These new reports presumably would allow the public and subsequently the Commission to second guess the station's judgment.⁸ This additional administrative burden coupled with the threat of sanction creates an enormous incentive for a station to throw its programming judgment out the window and just run a captioned program, regardless of circumstances.⁹ Flexibility, therefore, remains an essential element of the Commission's new captioning rules. NAD/CAN's proposal, therefore, should be rejected.

Second, NAD/CAN's proposal to require real time captioning of news and public affairs programming by January 1, 2000, is premature and falsely premised. The Commission just rejected it. When new developments warrant another look at the matter, then the Commission should review it. Indeed, it has promised to do so. Now, however, no reason exists to reconsider the issue. NAD also is cavalier in its treatment of local television stations, insisting that "larger

⁷For example, the extensive, necessarily unanticipated, and unscripted coverage of events like the Air Florida crash, the MARC train wreck, and the blizzard of 1996 would consume substantial amounts of the safety margin created by the 95 per cent requirement.

⁸As NAD/CAN points out, "[P]roviders would remain accountable for their failure to caption a given program." NAD at 6. However, what standard would the Commission employ to adjudicate complaints? NAD/CAN's proposal portends not only a new wave of complaint proceedings, but also development of a body of law to govern such complaints.

⁹All of this constitutes an economic burden no less real than the cost of captioning a program. Administrative costs and legal fees may appear on a different line in a budget or P&L statement, but in either case, the expense is real.

stations....would best be able to meet the costs of such captioning.”¹⁰ NAD, however, would allow “[s]tations with smaller budgets” to seek a waiver from the Commission.¹¹ ALTV respectfully submits that many local television stations recently have initiated or are planning to initiate local newscasts. These stations, regardless of the size of their markets (or their budgets), should not be saddled with additional start-up costs. Similarly, all local television stations are confronting the considerable cost of constructing new digital transmission facilities under a tight timetable. Thus, the imposition of any new regulatory costs and burdens must be undertaken only with considerable reluctance.

Third, no basis exists for NAD/CAN’s demand that the Commission eliminate the requirement that complaints first be directed to the video programming distributor. NAD/CAN complains that “it may be confusing, frustrating, and time consuming for consumers to ascertain and locate the correct recipient for such complaints.”¹² The Commission’s procedures, however, virtually eliminate the potential for confusion, frustration, or wasted time. In the case of programming on a local television station, even consumers unfamiliar with the Commission’s procedures are likely to send their complaint to the station. Furthermore, if they mistakenly send it to a cable system which carries the station, the cable system not only must return the complaint to the complainant, but also provide the complainant with the name and address of the station to which the complaint should be sent. Similarly, if the complaint goes to the station, but the station had no editorial control over the program, the station likewise not only must return the complaint to the complainant, but also provide the complainant with the name and address of the party to which the complaint should be sent. None of this implies any need for confusion or frustration on the part

¹⁰NAD at 16.

¹¹*Id.*, n.16.

¹²NAD at 20.

of a complainant, and readdressing a complaint hardly seems to be a particularly time consuming endeavor.

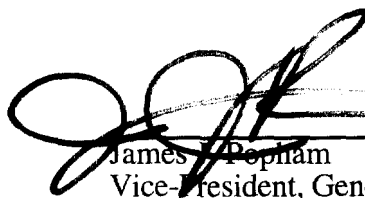
Moreover, by requiring that complaints be addressed first at the local level, the Commission leaves the matter in the hands of the parties with the first-hand knowledge and information to respond and, if necessary, correct a problem. Local television stations strive to be good citizens in their communities. They have no incentive to stonewall complainants. Even where the station and complainant can only agree to disagree, the complainant then will go to the Commission with more and better information. Indeed, much of the point of placing the responsibility for captioning on stations instead of their program providers was to simplify the complaint process and provide a basis for dialogue in lieu of dispute. Therefore, the Commission ought maintain its requirement that complaints about broadcast programming first be filed with local stations.

Lastly, ALTV opposes S3HP's request that new networks be required to provide set minimum numbers of hours of captioned programming after their exemption expires.¹³ This proposal appears based on the faulty premise that new networks will provide a full day's program schedule. No broadcast network, much less an emerging network does this. A new network which provided, for example, eight to 10 hours of programming per week (or approximately 100 to 120 hours per quarter) would have to caption nearly all its programming under a 100 hour per quarter bench mark. Moreover, because local stations -- not networks -- are the focal point of responsibility, application of separate bench marks to these new networks serves no purpose. To the extent the network provides programming to a station, that programming, as part of the station's schedule, will be subject to the station's overall compliance with the captioning bench marks. Therefore, S3HP's proposal has no pertinence to new broadcast television networks.

¹³S3HP at 6.

Again, in opposing the above requests, ALTV seeks primarily herein to assure that imposition of the new captioning rules in no way compromises local television stations' abilities to make programming judgments based on their perception of the public interest in their communities. Even trivial incursions into a licensee's programming judgments have consequence: the public sees a second-best service. Therefore, ALTV urges the Commission to resist these and other proposals which would increase the prospect that broadcast program decisions are functions of compliance with the captioning rules, rather than the licensee's sound, unfettered public interest judgment.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Opposition to Petitions for Reconsideration" were served on this 26th day of November, 1997, via first class mail, postage prepaid, upon the following:

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